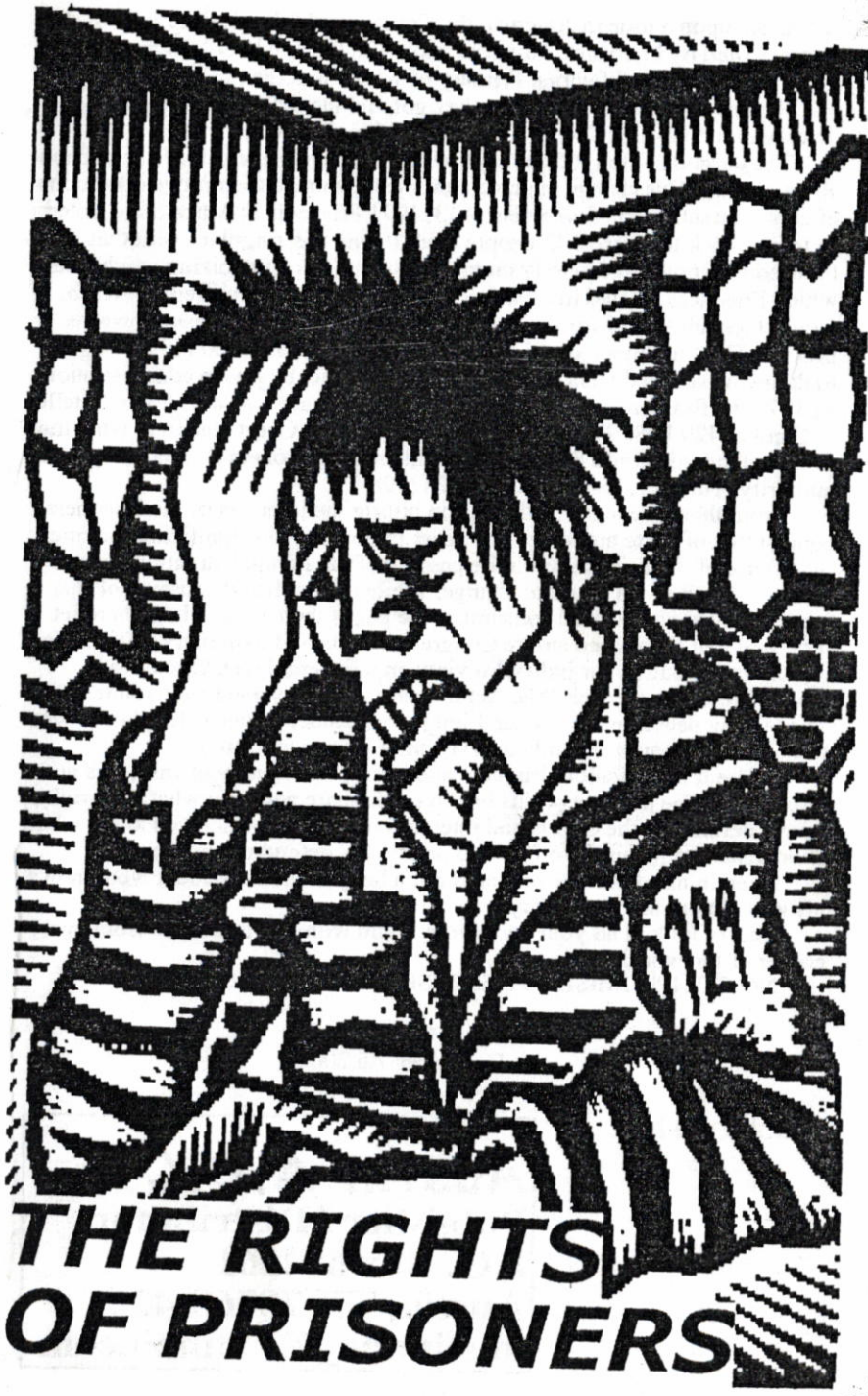

THE RIGHTS OF PRISONERS

Once upon a time in America, the Courts wouldn't give the time of day to cases filed by Prisoners. This was known as the hands off era and was influenced by several factors. Primary of which was the public perception that Prisoners deserved what ever they got and the deference Judges demonstrated towards decision by prison administrators.

The turmoil of the 1960s brought with it a change in the public's perception about caging . This change in perception wasn't enough to improve conditions of confinement. From September 9-13, 1971 Prisoners at Attica State rioted. In taking back the prison 43 people died. It was this singular event that focused the spotlight squarely on prisons and the dehumanizing conditions which Prisoners existed in on a day to day basis as exemplified by Attica. It would take until 1979 for the courts to take a hands on approach towards prisons. The Supreme Court in Bell v. Wolfish 441 U.S. 520 (1979) began to define what is and what is not acceptable conduct by prison administration. In 1976 the first major prison medical treatment case was decided in Estelle v. Gamble 429 U.S. 97 (1976). Finally in 1987 the Court clarified what the proper standard should be used when balancing Prisoners Rights and prison authority Turner v, Safely 482 U.S. 78 (1987).

From there the legal battle was on pitting the interests of the Prisoners against that of State authority. For years Prisoners won significant victories in defense of their rights. With the passing of the Prison Litigation Reform Act in 1995 this was about to change. While a complete discussion of this piece of legislation would consume more pages then are available here let it be said that with a pen stroke Congress has made it extremely difficult for Prisoners to petition for judicial review on a Federal level. One of the immediate consequences "the Act imposes a controversial "automatic stay" is a 90-day deadline for a federal judge to consider a state official's request to end court monitoring and supervision of prison conditions."

While it is difficult to litigate conditions of confinement case, it is not impossible. The purpose of this booklet is to share with you what your rights are as defined by the Courts and international treaties. Once you know what your rights are its up to you how to proceed in defending those rights.

Keep in mind that the author is not a lawyer but a dissident who knows his was around the law library.

Best of luck in all your endeavors. I join with you and shout from every corner of the world

NO COMPROMISE IN DEFENSE OF PRISONER RIGHTS!

Mike Lee
December 7th,2002

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major provisions:

* Prisoners must exhaust internal prison grievance procedures before they file suit in federal court.

* Prisoners must pay their own court filing fees, either in one payment or in a series of monthly installments.

* Courts have the right to dismiss any prisoner's lawsuit which they find to be either "frivolous," "malicious" or stating an improper claim. Each time a court makes this determination, the case can be thrown out of court and the prisoner can have a "strike" issued against them. Once the inmate receives three "strikes," they can no longer file another lawsuit unless they pay the entire court filing fee up front.

Note: If the inmate is in risk of immediate and serious physical injury, the three strike rule may be waived.

* Prisoners cannot file a claim for mental or emotional injury unless they can show that they also suffered a physical injury.

* Prisoners risk losing credit for good time if a judge decides that a lawsuit was filed for the purpose of harassment, that the inmate lied, or that the inmate presented false information.

Note: Inmates do not have a right to have face-to-face interviews with news reporters or media representatives. The rationale for this limitation is that the media are not entitled to have access to inmates that members of the general public would not be able to have.

* Inmates have the right to be free from racial segregation in prisons, except where necessary for preserving discipline and prison security.

* Inmates do not have a reasonable expectation of privacy in their prison cells and are not protected from "shakedowns," or searches of their cells to look for weapons, drugs, or other contraband.

* Inmates are entitled, under the Due Process Clause of the Constitution, to be free from unauthorized and intentional deprivation of their personal property by prison officials.

* The Supreme Court has held that inmates who are the subject of disciplinary investigations or proceedings are entitled to advance written notice of the claimed violation and a written statement of the facts, evidence relied upon, and the reason for the action taken. The inmate is also entitled to call witnesses and present documentary evidence if allowing him to do so would not risk order, discipline, and security. In that regard, inmates are rarely allowed to confront and cross-examine adverse witnesses in an internal disciplinary proceeding.

Note: In most cases, an inmate is not entitled to representation by counsel in a disciplinary proceeding.

* Inmates are entitled to a hearing if they are to be moved to a mental health facility. However, an inmate is not always entitled to a hearing if he or she is being moved between two similar facilities.

* A mentally ill inmate is not entitled to a full-blown hearing before the government may force him or her to take anti-psychotic drugs against his or her will. It is sufficient if there is an administrative hearing before independent medical professionals.

* In 1996, Congress passed the Prison Litigation Reform Act (PLRA), which has been seen by many critics as unfairly limiting inmate access to the federal court system. The PRLA contains five

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* Inmates have the right to be free from sexual crimes, including sexual harassment.

Example: A federal court in the District of Columbia found prison officials liable for the systematic sexual harassment, rape, sodomy, assault, and other abuses of female inmates by prison staff members. In addition, the court found that the prison facilities were dilapidated, that there was a lack of proper medical care available, and that the female inmates were provided with inferior programs as compared to male inmates within the same system.

* Inmates have the right to complain about prison conditions and voice their concerns about the treatment they receive. They also have a right of access to the courts to air these complaints.

Example: A federal court in Iowa recently awarded a prisoner over $7,000 in damages after it was found that he was placed in solitary segregation for one year and then transferred to a different facility where his life was in danger just because he complained about prison conditions and filed a lawsuit challenging the conditions of his confinement.

* Disabled prisoners are entitled to assert their rights under the Americans with Disabilities Act to ensure that they are allowed access to prison programs or facilities that they are qualified and able to participate in.

* Inmates are entitled to medical care and attention as needed to treat both short-term conditions and long-term illnesses. The medical care provided must be "adequate."

* Inmates who need mental health care are entitled to receive that treatment in a manner that is appropriate under the circumstances. The treatment must also be "adequate."

* Inmates retain only those First Amendment rights, such as freedom of speech, which are not inconsistent with their status as inmates and which are in keeping with the legitimate objectives of the penal corrections system, such as preservation of order, discipline, and security. In this regard, prison officials are entitled to open mail directed to inmates to ensure that it does not contain any illegal items or weapons, but may not censor portions of correspondence which they find merely inflammatory or rude.

a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. § 1915(b)(2).

THREE STRIKES PROVISION

In addition to the filing fee, another important restriction concerns prisoners who have filed multiple lawsuits. risoners, under PLRA, may not proceed in forma pauperis in civil actions or appeals if, while they were incarcerated or detained, they have brought three of more prior actions or appeals in a court of the United States that were "dismissed as frivolous, malicious, or for failing to state a claim." 28 U.S.C. §1915. The only exception to this rule is when the inmate is "under imminent danger of serious physical injury." In such a case, the action may be filed.

The "three strikes" rule has withstood constitutional attack. Rodriguez v.Cook, 163 F.3d 584, 587-91 (10th Cir. 1998)(rejecting due process, equal protection, access to courts, Ex Post Facto Clause, and separation of powers arguments)

DAMAGE AWARDS

Another provision concerns what happens to any award of damages that a prisoner receives if he successfully litigates a claim. Under PLRA, damage awards against prisons or their personnel shall be paid directly to satisfy

any outstanding restitution orders, with the remainder forwarded to the prisoner. Stat. 1321 § 807.

CONCLUSION

NCPLS will continue to probe the legal contours of the Act, and engage in litigation consistent with the interests of our clients. However, the changes brought about by PLRA impacts every litigation decision made by NCPLS.

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MAIL

"In the First Amendment context a corollary of this principle is that a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law. " Pell v. Procunier, 417 U.S. 817, 822 (1974).

The identifiable government interest is of course to keep you locked up, make sure you don't go down the road looking for a cold beer or planing actions to disrupt the operation of the institution like of course riots.

Until 1974 prison staff could reject mail that was critical of the prison administration, complained about conditions, expressed inflamatory beliefs, or just plain didn't like. The Supreme Court invalidated these types of mail regualtions with its decision in Procunier v. Martinez, 416 U.S. 396 (1974) .

It should be noted that the Court's ruling was based on the outsider's right to communicate with the Prisoner and not the opposite. Oh well we really could care less how we got the right but that we did get it. the court went on further to define when mail could be censored by stating that a mail regulation must further an important interest and must be no greater then is necessary or essential to protect a government interest. unrelated to the suppression. For instance. Lets say Lt. Daffy Duck rejects your favorite Anarchist magazine. He does so based on rule such and such. The rule can't raationolize the rejection because its Anarchist, but it can reject it on the fact that it threatens the interes of the government to keep you locked up. You always argue that the publication does not threaten the substantive security interest of the institution because its information and rehavbilitative in nature. For ten years Prisoners rolled merrily along due to this ruling which forced Prison administrators to prove two things when rejecting mail

1.) The government interest they were trying to protect

2.) That the regulation protecting that government interest was no greater then necessary or it was essential to protecting that interest.

Until 1987 lower courts used a variety of standards to determine if a Prisoners First Amendment rights were violated. Then the Supreme Court established a single standard to determine if a there exists a violation of a Prisoners Constitutional Rights Turner v. Safley, 482 U.S. 78 (1987).This ruling awarded Prison authorites more power when it came to administrating the prison. The standard now is all they have to prove that the regulation is reasonably related to a legitimate penological goal. In a stunning blow to Prisoners the Courts established a four point test to determine if the regulation was valiid even if it violates your rights,

First, there must be a "valid, rational connection" between the prison regulation and the legitimate governmental interest put forward to justify it.

A second factor relevant in determining the reasonableness of a prison restriction, as Pell shows, is whether there are alternative means of exercising the right that remain open to prison inmates

A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally

Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation. By the same token, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an "exaggerated response" to prison concerns. Turner v. Safley, 482 U.S. 78. 89 (1987)

As if this wasn't bad enough. Two years later the Court directly limited Martinez, restricting it to regulation of outgoing correspondence. In the Court's current view the needs of prison security justify a more deferential standard for prison regulations restricting incoming material, whether those incoming materials are correspondence from other prisoners, correspondence from nonprisoners, or outside publication. Thornburgh v. Abbott, 490 U.S. 401, 411-14 (1989)

So where we stand now is that the least restrictive standard set forth in Procunier v. Martinez, 416 U.S. 396 (1974) and the most restrictive Thornburgh v. Abbott, 490 U.S. 401, 411-14 (1989) In short outgoing mail is subject to less restrictions then that coming in.

Publications

You have the right to recieve books, magazines, publications

1998 WL 823390 (9th Cir., Nov. 19, 1998)(dismissing claim of being housed with mentally disturbed prisoner); Williams v. Scott, 142 F.3d 441, 1998 WL 152969, 1998 U.S.App. LEXIS 6556 (7th Cir. 1998)(unpublished)(prisoner's claim that punishment for refusing to take a TB test on religious grounds violated the Eighth Amendment is barred); Valentino v. Jacobson, 1999 WL 14685 at *3 (S.D.N.Y., Jan. 15, 1999)(dismissing claims of psychological injury resulting from segregated confinement); Walker v. Hubbard, 1998 WL 2051 (N.D.Cal., Apr. 22, 1998)(dismissing complaint of being held in high-security unit in fear of life); Evans v. Allen, 981 F.Supp. 1102 (N.D.Ill. 1997)(dismissing claim of segregated confinement during which bodily fluids were thrown on plaintiff).

FILING FEES

A prisoner who wants to file a civil suit as a poor person (in forma pauperis) must submit certified statements of his prison account for the preceding six months and will be required to pay the entire filing fee in monthly installments. The filing fees will be sent by the prison from the prisoner's account. (The fees are not dischargeable in bankruptcy. 11 U.S.C. § 523(a)(17)). There is no such provision for any other class of people who are impoverished.

Even if a fee has been paid in full, cases may be dismissed if there has been a false allegation of indigency, if the action is deemed malicious or frivolous, if the complaint fails to state a claim for which relief can be granted, or if it seeks monetary relief against a defendant who is entitled to claim immunity from suit. 28 U.S.C. § 1915(a)-(e). See Leonard v. Lacy, 88 F.3d 181, 186 (2d Cir. 1996) holding that liability for fees on appeal includes both $5 filing fee and $100 docketing fee.

The initial fee is 20% of the greater of the average monthly deposits or the average monthly balance for the preceding six months, which the court is to "assess and, when funds exist, collect." 28 U.S.C. § 1915(b)(1). After the initial filing fee, monthly payments will be deducted from the prisoner's trust account at a rate of 20% of the preceding month's income, to be forwarded by the prison "each time the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. § 1915(b)(2). However, "in no event shall a prisoner be prohibited from bringing

THE PRISON LITIGATION REFORM ACT: A NEW CHAPTER IN PRISON LAW

The Prison Litigation Reform Act (PLRA), Pub.L. No. 104-134, Stat. 1321 §§ 801-810 (April 24, 1996), amended, Pub. L. No. 105-119, 111 Stat. 240 (November 26, 1997), has dramatically changed the legal landscape of prisoner litigation.

Two major provisions of this act affect the plaintiff-petitioner's burden in a class action challenge to prison conditions [18 U.S.C. § 3626] and the ability of prisoners to make individual claims arising out of the conditions of their confinement.

REMEDIES

The first of these new provisions limits the ability of federal courts to order remedies to proven constitutional violations. PLRA states that remedies designed to rectify unconstitutional condition (called prospective relief) "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." In addition, such orders "shall not be granted or approved . . .unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. §3626(a)(1)(A). Even when prospective relief has been granted, there are new provisions that limit the duration of the order to a period of two years. 18 U.S.C. § 3626(b)(1)(A)(i). Or, such an order may be terminated by motion of any party one year after the denial of a prior termination motion. 18 U.S.C. § 3626(b)(1)(A)(ii). Finally, prospective relief can be terminated immediately if it was entered without findings that it "is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(b)(2). See Tyler v. Murphy, 135 F.3d 594, 597 (8th Cir. 1998).

The termination provision has been applied in a major case affecting inmates in North Carolina. In 1986, The North Carolina Department of Correction was ordered to contract with NCPLS to provide legal assistance to inmates within the North Carolina

prison system. Smith v. Bounds, 657 F. Supp. 1327 (1986); aff'd, Smith v. Bounds, 813 F.2d 1299 (4th Cir.1987); cert. denied, 488 U.S.869 (1988). After PLRA was enacted, the Department of Correction moved that the order be terminated under the provisions of the Act. The United States District Court for North Carolina, Eastern Division, ruled terminated its earlier order because the court could was unable to conclude that "prospective relief remains necessary to correct a current and ongoing violation of the Federal right." Smith v. Freeman, (5:72-CV-3052-F) slip opinion at p.6 (U.S.D.Ct., E.D.N.C.,19 June 1998), citing 18 U.S.C. §3626(b)(3).

Although no longer compelled to do so, the Department of Correction continues to contract with NCPLS in order to fulfill its ongoing constitutional obligation to provide access to the courts for inmates.

PHYSICAL INJURY

Major changes caused by the PLRA affect the ability of an individual prisoner to litigate specific issues. For example, according to the Act, "no Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). This provision appears to conflict with the well established right to seek redress for constitutional violations, including, for example, intrusions upon liberty. For example, a person deprived of the right to practice his religion may suffer no "physical injury" in the sense of bodily harm.

In several cases, complaints about threats of violence or exposure to a risk of violence from others have been dismissed because no actual violence had occurred. See, for example, Tapia v. Sheahan, 1998 WL 919709 at *5
(N.D.Ill., Dec. 30, 1998); Flannery v. Wagner, 1998 WL 709762 at *1 (D.Kan., Aug. 10, 1998) (dismissing claim that prison officials spread rumors that subjected the plaintiff to a risk of assault, which did not occur.)

Types of claims barred by the "physical injury" language include claims based on placement or conditions in segregated confinement, Warren v.McDaniel, ___ F.3d ___ (unpublished),

but they must be from the publisher Bell v. Wolfish 441 U.S. 520 1979. Some joints have gone to banning Playboy, etc. The rule has remained because nobody wants to challenge it because a court would probably side with the Warden anyway. I mean come on , how rehabilitative is Hustler!?

SUMMARY

You have the right to recieve correspondence, publications, books etc. as long as they do not threaten the substantive security interests of the institution. Such things as your favorite book on lock picking, bomb making etc. are of course prohibited. In Oregon they have taken this a half a step further and prohibited material which THEY BELIEVE promotes Security Threat Group Activity (gang) for instance anything to do with Anarchism. A method for challenging such a ridiculous idea that Anarchists are a criminal as a basis for stealing our mail is being challenged.

Any time Staff takes your mail GRIEVE THE BASTARDS. It doesn't matter if the system works or not because there are two reasons to raise hell.

1.) This is only the begining. If they can steal your mail, I guarentee you that they will steal something else like your gain time or feed you garbage.

2.) The courts demand you exhaust all administrative remiedies before you sue the authorities. Judge Judy will through you out of court on yer ear if you don't.

libraries or adequate assistance from persons trained in the law." Id., at 828. Petitioners, who are officials of the Arizona Department of Corrections (ADOC), contend that the United States District Court for the District of Arizona erred in finding them in violation of Bounds, and that the court's remedial order exceeded lawful authority." LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, et al. v. CASEY et al., ___ U.S. ___ (1996)

Where we stand now is that you must be provided with some type of legal assistance. It could be contract lawyers. legal clinics, and yes even a law library. Since this ruling several states have been eliminating their libraries. In response to this situation folks on this side have been attempting to set up some type of legal assistance program to help you understand how to defend yourself legally from abusive staff. This publication is but one such effort and by working together we can find others.

Medical Care

The first major medical treatment case was decided by the Court in 1976. It established a standard by which your Constitutional Right to medical care is determined. Keep in mind that denying you an aspirin does not rise to the level of a Constitutional violation. It is only when the authorities are "deliberately indifferent" to your needs for medical care is when the violation occurs. The Court used a specific statement to define what they meant by deliberate indifference.

We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain,. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Estelle v. Gamble 429 U.S. 97, 104. The footnote from this case illustrates further what the Court's lesson is.

"Williams v. Vincent, 508 F.2d 541 (CA2 1974) (doctor's choosing the "easier and less efficacious treatment" of throwing away the prisoner's ear and stitching the stump may be attributable to "deliberate indifference . . . rather than an exercise of professional judgment"); Thomas v. Pate, 493 F.2d 151, 158 (CA7), cert. denied sub nom. Thomas v. Cannon, 419 U.S. 879 (1974) (injection of penicillin with knowledge that prisoner was allergic, and refusal of doctor to treat allergic reaction); Jones v. Lockhart, 484 F.2d 1192 (CA8 1973) (refusal of paramedic to provide treatment); Martinez v. Mancusi, 443 F.2d 921 (CA2 1970), cert. denied, 401 U.S. 983 (1971) (prison physician refuses to administer the prescribed pain killer and renders leg surgery unsuccessful by requiring prisoner to stand despite contrary instructions of surgeon)". Estelle v. Gamble 429 U.S. 97, 104 footnote 10

PSYCHIATRIC CARE

Denial of adequate psychiatric care may violate the Eighth Amendment Ramos v. Lamm 639 F. 2d 158, 162 (3rd Cir. 1978) but some courts have stated that it may be "limited to that which may be provided upon a reasonable cost and time basis. Browing v. Godwin, 551 F. 2d 44 (4th Cir. 1977. So in other words though

you may need it, the Warden still can determine time and place. Thus what they can do is lock you in the hole and do the minimal watcher stuff. Apply the standards set in Estelle to determine if you are getting adequate treatment.

FORCED DRUGGING

You can be forced to accept treatment with anti psychotic drugs. there must be a hearing before they do this to you but it doesn't have to be before a judge it can be a special committee that reviews the facts. Washington v. Harper 494 U.S. 210 (1990)

AMERICANS WITH DISABILITIES ACT OF 1990

Well score one for our side. In Pennsylvania Department of Corrections et al. v. Yeskey 524 U.S. 206 (1998) the court ruled that State prisons are a public entity as defined by statute and thereby subject to the provisions of the act.

H.I.V. - AIDS

One of the most challenging things about managing a prison is how to deal with the pandemic of H.I.V. - AIDS. There have been several experiments trying to devise a solution but in numerous instances they have been challenged by litigation.

TESTING

Courts have generally deferred to the judgment of prison medical authorities that such testing is not necessary. Feigley v. Fulcomer, 720 F. Supp 475 (MD PA 1989)

SEGREGATION

Attempts to require all Prisoners who are HIV positive to be segregated from the general population have been unsuccessful

CONFIDENTIALITY

Several Courts have found that unnecessary disclosure of a person's HIV status does violate a persons limited right to privacy. Woods v. White 689 F. Supp. 874 (WD Wis 1988), Doe v. Coughlin 697 F. Supp 1234 (NDNY 1988), Nolley v. County of Erie, 776 F. Supp 715 (WDNY 1991)

TREATMENT

Failure to treat an AIDS Prisoner is a violation of the Eighth Amendment. Maynary v. New Jersey, 719 F. Supp 292 (DNJ 1989) If this happens you argue that the authorities have been

LAW LIBRARIES -ACCESS TO THE COURTS

"The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.".

This quote is taken from Bounds v. Smith (430 U.S. 817), the 1977 landmark Supreme Court decision, which led to the establishment of law libraries in most major U.S. prisons.

On June 24, 1996, the United States Supreme Court sharply reduced prisoner's access to law libraries, finding that prisoners must show "actual injury" to obtain relief and narrowing the scope of the right at issue. (Lewis v. Casey).

The decision overturned a Ninth Circuit case that had granted Arizona prisoners broad relief -- including at least ten hours a week actual access, minimal legal assistance, and other services. (Casey v. Lewis (9th Cir. 1994) 43 F.3d 1261.)

In an opinion written by Justice Scalia, the Court found that prisoners must show actual injury before challenging laws library access. Although some courts had rejected requirements for actual injury in class action suits alleging systemic problems, the court rejected this distinction. It reversed the Arizona decision because only two instances of actual injury were at issue: failure to provide assistance to illiterate prisoners had resulted in two suits being dismissed.

The court also narrowed the scope of what constitutes access to court. It stated that prison officials had no duty to help prisoners determine if they had grievances or to help them litigate law suits. Access to court was limited to filing challenges to convictions or conditions of confinement. The court refused to recognize a wide range of civil problems, including divorce and child custody matters1

In Bounds v. Smith, 430 U.S. 817 (1977), we held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law

A FEW OTHER TITLES WE PUBLISH

PRISONS:
A SOCIAL CRIME AND FAILURE
Emma Golman

PRISONS :
and Thier Moral
Influence on Prisoners
Peter Kropotkin

Alternatives:
An Anarchist View of Prisons
Crime and Violence
Michael Lee

Stick em' Up
Questions and Answers
about crime and imprisonment
Michael Lee

A.B.C. of Anarchism
Alexander Berkman

Prison Memoirs of an Anarchist
Alexander Berkman

deliberately indifferent to your medical needs. Document everything in writing.

MEDICAL CO-PAY

Ah yes one of my personal pet peeves. 25 States currently mandate medical co-pay for Prisoners. Usually its only a buck or two but that's not the point. The point is they have to provide you with medical care cause you can't get it yourself. The courts have said right out

> "an inmate must rely on prison authorities to treat his medical needs if the authorities fail to do so, those needs will not be met." Estelle v. Gamble 429 U.S. 97, 103 (1973), West v. Atkins 487 U.S. 42, 54-55 (1988)

Then they turn around and state that co payment is legal as long as you are not denied access to health care because you are broke.

The bottom line is that co-payment is legal as of this writing but in the future this may change but only if we get real lucky.

The Rights Of Inmates

www.findlaw.com (public domain)

Editors note: I'm not real happy with the term inmate but this a pretty good article and since there was space that "Oh what the hell throw it in.
If you hang on the leg of a uniform, if you are in a mental institution you are an inmate, if you are a punk ass snitch then you are an inmate. If you are a stand up person doing their time then you are a Convict or Prisoner.

Even the most chronic or hardened inmates have basic rights that are protected by the U.S. Constitution. If you are facing incarceration, you should know your rights. If you have a family member or friend who is in prison or jail, you should know what their rights are, as well.

* Pre-trial detainees (those citizens who are too poor to afford bail and who are therefore held pending trial) have the right to be housed in humane facilities. In addition, pre-trial detainees cannot be "punished" or treated as guilty while they await trial.

* Inmates have the right to be free, under the Eighth Amendment, from inhuman conditions because those conditions constitute "cruel and unusual" punishment. The term "cruel and unusual" was not defined at the time the Amendment was passed, but it was noted by the Supreme Court in 1848 that such punishments would include "drawing and quartering, embowelling alive, beheading, public dissecting, and burning alive," among other things. Today, many of these punishments may seem antiquated, but the basic scope of the protection remains the same. Any punishment that can be considered inhumane treatment or that violates the basic concept of a person's dignity may be found to be cruel and unusual.

Example: In 1995, a federal court in Massachusetts found that inmates' constitutional rights were violated when they were held in a 150-year-old prison that was infested with vermin, fire hazards, and a lack of toilets.

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EXCESSIVE FORCE

DEADLY FORCE

Despite what Staff thinks they can't just go running around kicking your ass. Now before you get to excited and run off to sue the Warden lets take a moment and examine this issue a little more carefully. The court defined in Whitley v. Albers, 475 U.S. 312, 320 -321 that it first must determine whether force was applied in a good faith effort to maintain or restore discipline, or whether if the force obdurate and wanton. This means if you initiate physical contact with staff they can use what ever reasonable force is necessary to control you. Keep in mind that in this particular case Albers was fleeing officers during a riot and they shot him. You would think that this would be a slam dunk case but instead Albers lost because the Court stated it was reasonable to shoot him in order to restore order to the institution. The court's judgment is based on first of all the overall circumstances the alleged violation occurred and then if the staff response was appropriate.

NON -DEADLY FORCE

A slightly different standard then the one above (obduracy and wantonness) applies in this situation. What is interesting and insightful is the following base for their reasoning: "Many of the concerns underlying our holding in Whitley arise whenever guards use force to keep order. Whether the prison disturbance is a riot or a lesser disruption, corrections officers must balance the need "to maintain or restore discipline" through force against the risk of injury to inmates. Both situations may require prison officials to act quickly and decisively. Likewise, both implicate the principle that "prison administrators should be accorded wide-ranging deference in the adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline and to maintain institutional security. "Hudson v. McMillian, 503 U.S. 1, 6 (1992) . The Court goes on to determine that Hudson's Eighth Amendment Rights were violated because the Officers used the force maliciously and sadistically.

Not every push or shove violates your rights. The question the Court will pose is Was the use of force by the prison guard repugnant to the conscious of mankind?